IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 29439 of 2007(D)

CMP.5520/2006 of J.M.F.C.-II, KANJIRAPPALLY

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PETITIONER:

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LIMITED, REGISTERED OFFICE,GATEWAY BULDG. APPOLLO BUNDER,MUMBAI-400001,REP.BY THE POWER OF ATTORNEY HOLDER, RAJESH G.,BRANCH IN-CHARGE, THRIKKAKARA, ERNAKULAM(SON OF GOPALAKRISHNAN NAIR, SREENILAYAM,KIZHAKKEKARA, MOOVATTUPUZHA).

BY ADV. SRI.DEVAPRASANTH.P.J.

RESPONDENTS:

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1. NAJEEM M. SAHIB, KALLUMKAL HOUSE, CHIRAKADAVU EAST P.O., PONKUNNAM, NOW RESIDING AT BHAVANI HOUSE, NEAR ETTUMANOORAPPAN COLLEGE, CHOORAKULANGARA, ETTUMANOOR.

2. S. ARUN, S/O. SREEDHARAN NAIR, ASWATHY, CHIRAKKADAVU EAST.

3. STATE OF KERALA, REPRESENTED BY S.I. OF POLICE, PONKUNNAM.

BY Government Pleader ADV.SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

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W.P.(C). No.29439 Of 2007

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Dated this the 4th day of October, 2007

JUDGMENT

The petitioner's application for release of a property under Section 451 Cr.P.C was dismissed by the learned Magistrate. The learned Magistrate appears to feel that because of an earlier order passed by this Court under Section 451 Cr.P.C, the Magistrate does not have jurisdiction to pass any fresh directions. The learned Magistrate does not appear to have taken note of the crucial change in circumstances - namely that the person in whose favour the earlier direction was issued has not chosen to actually take delivery of the vehicle.

2. The learned Magistrate must certainly taken note of the change in the circumstances and pass appropriate fresh orders under Sec.451 Cr.P.C. No Magistrate can be oblivious to the plight of the vehicle being exposed to sun and rain and getting deteriorated and damaged. The decision in **Sunderbai Ambalal Desai vs. State of Gujarat** (SC 2003(2) KLT 1089 must be anxiously considered by the learned Magistrate in letter and spirit. The proper avenue of challenge for the petitioner against the impugned order would certainly be to file a revision petition, I do note.

3. The learned counsel for the petitioner submits that, with these observations, the petitioner shall make a fresh application for appropriate and fresh direction under Sec.451 Cr.P.C. If the petitioner makes such an application, the learned Magistrate must consider the change of circumstances and pass appropriate orders. The earlier order will not in any way stand against the discretion of the learned Magistrate to pass fresh orders in the changed circumstances. Notice shall of course be given to the person in whose favour the earlier order is passed.

4. The Crl.M.C is hence dismissed with the above observations

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE